Supreme Court, U. S.
FILED
AUG 13 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 74-635

UNITED STATES OF AMERICA, PETITIONER

v.

ROSE WONG

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 22, 1974
CERTIORARI GRANTED JUNE 1, 1976

In the Supreme Court of the United States

No. 74–635

UNITED STATES OF AMERICA, PETITIONER

v.

ROSE WONG

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Relevant Docket Entries	1
Portions of Respondent's Testimony Before the Grand Jury, September 7, 1973	2
Indictment	5
Respondent's Motion to Dismiss Indictment	7
Portions of Hearing on Respondent's Motion to Dismiss Indictment, January 29, 1974, and February 8, 1974	8
Order Granting Respondent's Motion, February 21, 1974	15
Order Allowing Certiorari	16

216-721—76——1

RELEVANT DOCKET ENTRIES

Date 1973	*Proceedings*
Nov. 29	Ord indictment filed, issue summons, ret-12-5-73 Filed indictment, issued summons.
Nov. 30	Filed notice of related cases (CR 73-761RHS, 73-762RHS, 73-763WTS, CR 73-764SAW.
Dec. 5	Filed ct ord that case is assigned to judge RHS for all fur proceedings. OJC.
Dec. 7	ORD; Deft pres for arraignment; cont'd to 12-14-73 for Plea-WOODRUFF Filed Deft's not of mo & mo for reassignment to be heard 12-14-73 Before Judge Schnacke. Filed Deft's not of mo & mo for reassignment to be heard 12-14-73/10:00am before judge Carter.
Dec. 14	ORD deft pres for plea, to set, & mo for reassignment; Plea of not guilty without prejudice to making any mos; Mo to reassign—Granted; Reassigned to Judge Zirpoli & Cont to 12-17-73/1:30 pm to set.
Dec. 17	Ord all P/T mos to be filed by 2-15-74. Contd to 1-22-74 @ 10 a.m. for jury trial. AJZ.
1974	
Jan. 14	Filed Stip and ord continuing hrg date to Jan 29, 1974 @ 1:30 pm. pr-tr ORD-Defts ex parte mo to con't pre-trial until 1-29-74 @ 1:30PM grntd.
Jan. 22	Filed mo to dism the indictment and mo for a hrg under Federal Rule 12(b) (4).
Jan. 28	Filed Government's response to Deft's mo to dism the indictment and for hrg.
Jan. 29	Ord case contd to 2-8-74 @ 10 a.m. for fur hrg on deft's mo to dism.
Jan. 31	Filed Affidavit in support of Gov't Response to Deft's mo to dism.
Feb. 7	Filed Deft's supplemental memo in support of deft's mo to dism the indictment. Filed Memo in support of Government's Response to Deft's Mo to Dism.
Feb. 8	Ord on for evidentiary hrg on deft's mo to suppress. evid. introdured after hrg the ct granted the deft mo to suppress. Deft counsel to prepare the ord. AJZ. Filed record of evid hrg on mo to suppress.
Feb. 21	Filed Order that Deft's testimony of Sept. 7-73 before the Grand Jury is suppressed for the use of evidence in this case (AJZ).
Feb. 25	ORD; Deft pres for jr tr. Govmt will file an appeal on ord granting to suppress, case cont'd to 10-29-74 @ 10:00 for jr tr.
Mar. 20	Filed notice of appeal by Pltf to the 9th CCA (appealing the ord suppressing evidence entered 2-21-74).
Apr. 10	Made and mailed record on appeal to 9th CCA.

Proceedings Before the Grand Jury for the Northern District of California

Reporter's Transcript

September 7, 1973

TESTIMONY OF ROSE WONG

Appearances

For the United States of America: ROBERT D. WARD, Assistant United States Attorney, 450 Golden Gate Avenue, San Francisco, California.

Friday, September 7, 1973

The FOREMAN. Do you solemnly swear that in the matters concerning which you are about to testify before this United States Grand Jury in and for the Northern District of California, you will tell the truth, the whole truth, and nothing but the truth, so help you God?

The WITNESS. Yes, I do.

The FOREMAN. Would you sit down, Miss—your name please?

The WITNESS. Wong, Rose Wong.

The FOREMAN. Miss Wong, let me just tell you who we are. We are the Federal Grand Jury for the Northern District of California.

This is the secretary, I'm the Foreman, this is the Deputy Foreman, these are the United States Attorneys, this is the stenographer and these are the jurors.

Mr. Attorney?

EXAMINATION BY MR. WARD

Q. Is it Miss or Mrs. Wong?

A. Mrs.

Q. Mrs. Wong, my name is Robert B. Ward and this is Mr. Hinckeley. Both of us are attorneys for the Justice Department.

This Grand Jury is investigating certain alleged violations of Federal Law, including the gambling laws, within the Chinatown area.

You have been subpoenaed to testify here because the Grand Jury feels that you have information which may be helpful in their investigation.

Prior to my asking certain questions, let me advise you of certain rights which you are entitled as a witness here.

You, of course, need not answer any question which you fell may tend to incriminate you.

A. Uh huh.

Q. The Fifth Amendment of the United States Constitution gives you the right to refuse to answer any question which you feel might incriminate you.

Do you understand that, mam?

A. Yes.

Q. Further, if you do give an answer, that answer may be used against you in a subsequent criminal prosecution, if in fact the Government should decide to prosecute you for any crime. Any statements you make here may be used against you.

Do you understand that?

A. Yes.

Q. You also have the right to consult with an attorney prior to answering any question here today. Do you understand that?

A. Yes.

Q. Have you consulted with an attorney?

A. No.

Q. Please be advised that should the occasion arise in which you do not want to proceed without talking to an attorney, that you have the right to notify us, and we will stop the proceeding and you may consult with an attorney prior to continuing with the questioning.

Do you understand that, mam?

A. Yes.

Q. Further, if you cannot afford an attorney, that we would see that an attorney is afforded to represent you.

Do you understand that?

A. Yes.

Q. Having sworn to tell the truth, Mrs. Wong, it is incumbent upon you to tell the truth, if you do answer any questions and should you knowingly give any false testimony, or false answers to any questions, you would be subject to prosecution for the crime of perjury under the Federal Laws.

Do you understand that?

A. Yes.

Q. Do you know what perjury is?

A. Not very well.

Q. Well, in essence perjury means telling a lie under oath. Do you understand what that is?

A. Yes.

Q. Do you know the difference between lieing and telling the truth?

A. Yes.

Q. Under oath?

A. Uh huh.

The FOREMAN. Mr. Ward, you might advise Mrs. Wong that the stenographer needs her answers.

Mr. WARD. Q. Mrs. Wong, the Foreman points out that you must answer each question. You can't nod your head or mumble. She has to take down an answer.

Do you understand that?

A. Oh, I see that.

Q. She is writing down all the questions and answers.

A. I see.

Q. With respect to perjury, as we have discussed it, let me advise you that the Federal crime of perjury, before a Grand Jury, carries a penalty of five years imprisonment. That is a maximum penalty and/or $10,000 fine.

* * * * *

Q. Have you ever given any money or gifts to any police officers in Chinatown?

A. No.

Q. Have you ever given any money or gifts to the people whose pictures are there in Exhibits No. 1 and 2?

A. No.

Q. Have you ever given any money or gifts to any uniformed officers?

A. No, sir.

Q. Any plain clothes officers?

A. No.

Q. Do you know where there's any place ir Chinatown where people gamble?

A. No. I rarely go around because I always stay around 31 Spaufford or else I go to Chinese show.

Q. Have you and Sam Chai ever met with any police officers to discuss gambling?

A. No.

* * * * *

In the United States District Court,
Northern District of California
Criminal No. CR 73 0765AJZ

Violation: 18 U.S.C. 1623—False Declarations Before a Grand Jury

UNITED STATES OF AMERICA, PLAINTIFF

v.

ROSE WONG, DEFENDANT

Indictment

The Grand Jury Charges: THAT

1. On or about the 7th day of September, 1973, in the City and County of San Francisco, State and Northern District of California, a grand jury of the United States, in and for the Northern District of California, was conducting an investigation into possible violations of Federal laws prohibiting the operation of illegal gambling businesses (Title 18, United States Code, Section 1955) and the obstruction of state and local law enforcement (Title 18,

United States Code, Section 1511) with a purpose of determining whether any persons violated such statutes.

2. At the time and place aforesaid, ROSE WONG, the defendant, did willfully and knowingly make a false material declaration while testifying under oath in a proceeding before said grand jury in that she testified as follows:

Mr. WARD. Q. Have you ever given any money or gifts to any police officers in Chinatown?

Mrs. WONG. A. No.

Q. Have you ever given any money or gifts to the people whose pictures are there in Exhibits No. 1 and 2?

A. No.

Q. Have you ever given any money or gifts to any uniformed officers?

A. No, sir.

Q. Any plain clothes officers?

A. No.

* * * * *

Q. Have you and Sam Chai ever met with any police officers to discuss gambling?

A. No.

* * * * *

3. The aforesaid declarations of ROSE WONG, the defendant, as she then and there well knew and believed, were false in that ROSE WONG had given money to Gurnie L. Cook, the police officer pictured in Grand Jury Exhibit No. 2 and that ROSE WONG and Sam Chai had met with a police officer to discuss gambling.

All in violation of Section 1623 of Title 18, United States Code.

A true bill.

/s/ HAYBERT K. HOUSTON,
Foreman.

/s/ JAMES L. BROWNING, Jr.,
United States Attorney.

/s/ ROBERT D. WARD,
Special Attorney, United States Department of Justice.

In the United States District Court,
Northern District of California

Criminal No. 73 0765 AJZ

Motion To Dismiss the Indictment and Motion for a Hearing Under Federal Rule 12(b)(4)

UNITED STATES OF AMERICA, PLAINTIFF

v.

ROSE WONG, DEFENDANT

DEFENDANT ROSE WONG hereby moves this Court to dismiss the indictment filed against her on November 29, 1973. This motion is made on the following grounds:

1. The indictment violates her rights to due process of law and her right against self-incrimination because it was obtained without the benefit of an interpreter which she needed in order to understand the grand jury proceedings upon which the indictment is based.

2. The testimony alleged to be perjurious was not material to the grand jury investigation, since the prosecutor who elicited her testimony had access to alleged earlier statements by defendant on the same subject and called her with a perjury indictment in mind.

3. The indictment is invalid because the testimony on which it is based was obtained without fully and specially warning defendant of the consequences of her testimony.

4. The indictment violates defendant's right to due process of law because it is based on testimony before a grand jury which was improperly convened in that the President failed to appoint and convene a legislatively-mandated National Commission on Individual Rights, and

5. The statute under which she is indicted is unconstitutional.

This motion is based on this motion and the accompanying memorandum of points and authorities, the affidavits of Allan Brotsky, Mark Deines, Roderick Auyang and Ruth Friedman, the records and files of this case, and oral argu-

ment to be presented at a hearing now scheduled for January 29, 1974, at 1:30 p.m., in the Courtroom of the Honorable Alfonso Zirpoli, United States District Court, San Francisco, California.

Dated: January 22, 1974.

GARRY, DREYFUS, MCTERNAN & BROTSKY.

By: /s/ Ruth M. Friedman.

In the United States District Court, Northern District of California

CR. No. 73-765 AJZ

UNITED STATES OF AMERICA, PLAINTIFF

v.

ROSE WONG, DEFENDANT

Before: Honorable ALFONSO J. ZIRPOLI, *Judge*

Reporter's Transcript

Tuesday, January 29, 1974
Friday, February 8, 1974

Appearances

For Plaintiff: ROBERT D. WARD, Esq., Special Attorney, Department of Justice, P.O. Box 36132, 450 Golden Gate Avenue, San Francisco, California 94102.

For Defendant: Messrs. Garry, Dreyfus, McTernan & Brotsky, Attorneys at Law, 341 Market Street, San Francisco, California; By: ALLAN BROTSKY, Esq. (1-29-74 & 2-8-74) and RUTH FRIEDMAN, Esq. (1-29-74).

* * * * *

3 Tuesday, January 29, 1974

The CLERK. Criminal Case 73-0765, United States of America versus Rose Wong, for pretrial motions.

The COURT. All right, may I have the file?

Mr. WARD. Good afternoon, Your Honor. Robert D. Ward appearing on behalf of the United States.

Mr. BROTSKY. Allan Brotsky and Ruth Friedman appearing for the defendant Rose Wong.

4-23 * * * * *

24 The COURT. * * * When the evidence is all in, I will have to conclude, first of all, whether in truth and in fact she understood these particular questions which relate to her rights; and then if I conclude that she understood them, I suppose I would have to just deny the motion. If, on the other hand, I conclude that she didn't understand them, then I have to give consideration to still another question, which ' what significance must I attach, in light of this case, to the fact that she didn't? Is that still enough to merit a dismissal? Or is the government correct, that even if that were true, you would still have no right to dismiss?

Mr. BROTSKY. Fair enough. I just wanted to say this. One of the questions that underlies this whole matter. . . . And, by the way, I want to make it clear that no criticism is intended here of the prosecutor who appeared before the Grand Jury.

The COURT. I understand that.

Mr. BROTSKY. I think what you have here is a distinction between what the Supreme Court in this Chinese

25 language case that they just handed down, giving the Chinese students in the schools of San Francisco the right to be taught in Chinese—they make a distinction between a laissez faire attitude and an affirmative action attitude. I think that's what is involved here. Where you have a Mrs. Wong, you have to——

The COURT. Oh, that affirmative action is based upon the obligation of the government and the court to promote the rights of individuals. And while there may be an obligation to promote here, I don't know that I could use the school case in any manner as authority for anything I may decide here.

Mr. BROTSKY. I doubt that, too. But I think the concept is a helpful one.

The COURT. I want to say to the United States Attorney, I have read the transcript and I agree with counsel, there couldn't possibly be any question as far as the conduct of the United States Attorney is concerned. Certainly it would be difficult to anticipate a motion of this character in the light of the circumstances existing at the time. I think that you did just about everything, in a sense, you could reasonably be expected to do. I don't know what experience you have had with people who are not familiar with the English language, or in particular the Chinese.

Mr. WARD. Well, none, particularly with the Chinese, Your Honor. I have had experience in the past with
26 Spanish speaking people.

Mr. BROTSKY. Some of us have even grown up in San Francisco or been here a long time and have had the good fortune of having had more experience than someone who might have lived elsewhere.

The COURT. We'll see what this hearing produces and will continue the matter until that time.

May I ask you one other question? Assuming for the moment—and this is no indication at all as to what the Court will or will not do—that the Court were to conclude that she didn't understand those two particular questions which I read, what would be the position of the government then?

Mr. WARD. Well, I would have to review it. But I think at this point I would say that the government would still take the position that the indictment is valid.

The COURT. I would suggest that you gentlemen give some thought to that question. If you want to submit a short memorandum on that question alone, I would be interested in having your views set forth.

Mr. BROTSKY. Very well.

29 Friday, February 8, 1974

The CLERK. Criminal Case 73–765, United States of America versus Rose Wong, further hearing on defendant's motion to dismiss.

Mr. BROTSKY. That's ready for Defendant Rose Wong, and she is present in court, Your Honor.

The COURT. Yes.

Mr. BROTSKY. I am ready to proceed at this time.

Mr. WARD. Good morning, Your Honor. Robert Ward appearing on behalf of the United States.

The COURT. Now, I have read these briefs, and of course one of the ultimate questions will be present regardless of whether she understood a particular question; that relates to the privilege against self-incrimination.

The other question is whether she understood the remainder of the questions propounded before the Grand Jury.

Mr. BROTSKY. We don't raise any serious doubt on that.

The COURT. I have read the transcript. Her answers—whether they are truthful or not is another thing, but they clearly indicate a full understanding of the questions.

Mr. BROTSKY. We make no opposite contention.

30–32 * * * * *

33 Mr. BROTSKY.

* * * * *

34 Oh, and incidentally, Your Honor, if I may break my chain of thought here for a moment, I want to say at the very outset also that we may have misconceived our remedy technically for what occurred here. I would like to ask the Court at this time, without the necessity for our filing any written motion to that effect, because I don't think there will be any prejudice to the government, to deem this a motion to suppress.

The COURT. The testimony?

Mr. BROTSKY. The testimony before the Grand Jury.

The COURT. Yes, I understand. That technically is the more appropriate procedure.

Mr. BROTSKY. I now so move the Court.

The COURT. All right.

35–97 * * * * *

98 The COURT.

* * * * *

That's the big problem now. I would say very frankly, it may very well be that this whole question resolves itself exclusively now on the question of whether or not she was

a target as a putative defendant; because as far as the question of being adequately warned of her constitutional rights, I'm satisfied that under the normal tests she was adequately warned. I'm further satisfied that she understood everything that transpired in the Grand Jury room, except for the first four or five pages. And, very frankly, I am amply convinced she did not understand that.

* * * * *

99 I'm really satisfied that as far as the rest of the testimony is concerned, she understood the questions and gave the answers she wanted to give. And the Court feels that the purpose of her answering in the manner in which she did may very well be that which was offered in the affidavit of Mr. Au Yang. This woman is obviously an intelligent woman. Nevertheless, despite the fact that she's obviously an intelligent woman, and that she understood all the questions except those I've just outlined, I'm still satisfied she didn't understand those questions. And those questions related to constitutional rights which she would appear to be entitled to understand. Certainly the ruling of Judge Sears in the case of United States versus Rangle (phonetic), 365 Fed. Supp. 155, and I would say in the Robinson cases on which the Government relied—in all of those cases, they make a substantial distinction when they get to Grand Jury proceedings between a witness and one who is a putative defendant. Even Judge Madden of the Ninth Circuit made that particular distinction; and I think it's a valid distinction.

100 Under the circumstances, the Court would be prepared to and does grant the motion to suppress.

* * * * *

101 The COURT.

* * * * *

It's obvious to me that part of the reason for calling this woman was to make a case against her, specifically, and others, other officers, with whom she would be a co-conspirator.

Now, the Government might elect not to name her as a co-conspirator, but nevertheless the purpose of it was to make a conspiracy case in which she would be a co-conspirator. I'm satisfied that for me to draw any other conclusion is to close my eyes to the realities of the evidence that I have before me.

Mr. WARD. Well, Your Honor, it's certainly different than in the Rangle decision, in which the Government did indict for the substantive offense at the same time they indicted for perjury.

The COURT. Well, the Government didn't indict for the substantive offense here because the party committed perjury and didn't implicate himself. If she had incriminated herself, she would have been indicted for conspiracy. That's the point. And since she was there as a putative

102 defendant and not as a witness, I think that the case of Judge Sears applies. I think that's a valid, clear distinction, and in my view it comes within a valid distinction to be drawn by the very language used by Judge Madden.

I haven't any doubt that she understood the rest of it, and I haven't any doubt that had she been an ordinary witness, she would have been required to answer to this Court for the charge of perjury. But she was a putative defendant.

Mr. WARD. Well, going back to that, Your Honor, she's testified herself that she didn't understand most of the questions—which I think brings us to a very serious credibility question in this case, not attempting to——

The COURT. Well, I say she is an intelligent woman. The last observation you made about her not understanding was—I agree with you. But I cannot. * * * I am convinced in my own mind that those constitutional privilege questions were not understood by her. They are difficult to understand by a man well-learned in the English language, in and of itself. And I say to you that one with her background, her culture, her lack of contact with the cultural element that would have some more specific knowledge about this * * *.

Although she did have gambling contacts, that does not indicate to me that she understood the sophisticated terms here.

103–108 * * * * *

109 Mr. WARD. But, Your Honor, the Courts seem to say that when a person commits perjury, he's got no right to allege any unconstitutional action on the part of the Government. Anything——

The COURT. He has when the perjury is committed because the Government brought him in not for the purpose of getting his testimony, but clearly for the purpose of involving him in criminal activity. He's not an ordinary witness. I don't know how you can think of a more putative defendant than one who's a reputed dealer and owner and giver of money in a conspiracy to bribe police officers. How can you get a better defendant target than Mrs. Wong? She's ideally a defendant target. And she was, and she was brought in. And I must conclude that that was the reason she was brought in. I might be mistaken, but * * *.

Mr. WARD. May the record——

The COURT. Yes?

Mr. WARD. The Government did attempt to warn the witness the best——

The COURT. No question about it. No question. But it wasn't effective. But you did. Under normal

110 circumstances, if the individual understood English, that would have been a full, complete and adequate warning. But unfortunately, the testimony leads one to the conclusion that Mrs. Wong did not understand these questions. And I have to not only rely upon the very nature of the questions and the answers which she gave, and the proof within the questions and answers themselves that she didn't understand, but substantially on the testimony of the professor, which clearly corroborates it and indicates that there are at times a disposition on the part of some individuals such as Mrs. Wong, with her lack of appropriate understanding of the language, to at times say yes when they didn't understand at all. And this record proves it, when it came to the previous perjury question, where she

said yes and still didn't know what perjury meant and had to have it explained. Then she understood, yes.

* * * * *

In the United States District Court, Northern District of California

Criminal No. 73 0765 AJZ

UNITED STATES OF AMERICA, PLAINTIFF

v.

ROSE WONG, DEFENDANT

Order

Defendant's motion to suppress her testimony of September 7, 1973, before a grand jury of this District pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure, came before this Court for hearing on February 8, 1974. Defendant was present with her counsel, Allan Brotsky and Ruth Friedman, and the United States appeared through its attorney, Robert D. Ward. The Court heard oral testimony by Dr. William W-J. Wang, Rose Wong, and Robert D. Ward, and received other evidence. Having considered all of the evidence and the affidavits on file in support of the motion,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

Defendant's testimony of September 7, 1973, before the Grand Jury is suppressed for the use as evidence in this case.

Dated: February 21, 1974.

/s/ ALFONSO J. ZIRPOLI,
U.S. District Judge.

Supreme Court of the United States

No. 74-635

UNITED STATES, PETITIONER

v.

ROSE WONG

Order Allowing Certiorari

Filed June 1, 1976

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

U.S. GOVERNMENT PRINTING OFFICE: 1976